

PUBLIC SERVICE COMMISSION

OF WEST VIRGINIA

CHARLESTON

\* \* \* \* \*

TYLER MORGAN, LLC

\* 18-1080-COAL-SC-GI

\*

\* \* \* \* \*

HEARING TRANSCRIPT

\* \* \* \* \*

BEFORE: MICHAEL A. ALBERT, Chairman

BROOKS F. MCCABE, Commissioner

HEARING: Thursday, October 18, 2018

1:00 p.m.

LOCATION: PSC Howard M. Cunningham Hearing Room  
201 Brooks Street  
Charleston WV

Reporter: Cynthia Piro Simpson

Any reproduction of this transcript  
is prohibited without authorization  
by the certifying agency.

1 A P P E A R A N C E S  
23 LINDA S. BOUVETTE, ESQUIRE  
4 Public Service Commission of West Virginia  
5 201 Brooks Street  
6 P.O. Box 812  
7 Charleston, WV 253238 Counsel for the Public Service Commission  
910 NICOLA D. SMITH, ESQUIRE  
11 Hoyer, Hoyer & Smith, PLLC  
12 22 Capitol Street  
13 Charleston, WV 25301  
14 Counsel for Tyler Morgan, LLC  
1516 ALSO PRESENT:  
17 Greg Birurakis  
18 Kathy Payne  
19 Andrew Jordan  
20  
21  
22  
23  
24  
25

1 INDEX TO WITNESSES  
2

3 DISCUSSION AMONG PARTIES

5 - 15

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## E X H I B I T S

1

2

(3)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

1 C

20

21

22

23

34

25

<u>Number</u>	<u>Description</u>	<u>Offered</u>
<u>STAFF EXHIBITS:</u>		
1	Direct Testimony of Gregory Birurakis	10
2	Internal Memorandum dated 10/3/18	11
3	Notices of Violation	12
4	Final Recommendation	12
5	Final Orders of Commission Imposing Violations and Administrative Sanctions	12
<u>JOINT EXHIBITS:</u>		
1	Joint Stipulation and Settlement Agreement	14

1 P R O C E E D I N G S  
2 -----3 CHAIRMAN ALBERT:4 Good afternoon. I'm Mike Albert,  
5 Chairman of the Public Service Commission. With me on my  
6 right is Commissioner Brooks McCabe. We're here to  
7 conduct a hearing in PSC Case Number --- hold on just a  
8 minute, PSC Case Number 18-1080-COAL-SC-GI.9 It's a proceeding that requires a coal  
10 shipper to show cause why the Commission should not  
11 enforce outstanding Notices of Violation in Circuit Court  
12 and assess costs and investigation of delinquent tonnage  
13 fees, and whether administrative penalties or costs  
14 should be imposed.15 This proceeding is before us under  
16 Chapter 17C, Article 7A of the West Virginia Code, which  
17 is the CRTS statute that sets a --- or establishes a  
18 network of roads in West Virginia that receivers of coal,  
19 vehicle operators shipping the coal and vehicle owners  
20 are entitled to use for the transportation of heavy loads  
21 of coal.22 The West Virginia Legislature delegated  
23 the oversight of the CRTS system to the Public Service  
24 Commission. And we have a statute and rules and  
25 regulations that deal with the use of that system.

1 Now, the Commission imposed a 57 ---  
2 I'm going to round these numbers, \$5,700 of  
3 administrative penalties on Tyler Morgan for loading  
4 commercial motor-vehicles with coal in an amount that  
5 exceeded the gross vehicle weight of the commercial motor  
6 vehicles. And it caused them to exceed the lawful weight  
7 limit on those roads. Tyler Morgan did not pay those  
8 particular administrative penalties.

15 A shipper that loads the permitted  
16 amount of coal that exceeds 88,000 pounds must remit to  
17 the Commission by the tenth day of each month a payment  
18 of five cents per ton applied to that total tonnage of  
19 the amounts involved in each shipment during the prior  
20 month. Tyler Morgan has not remitted those tonnage fees  
21 as required.

22 On July 20th, the Commission opened  
23 this proceeding and require Tyler Morgan to show cause  
24 why the Commission should not enforce, in Circuit Court,  
25 the administrative penalties imposed by the Final Order

1 and assess the costs to Tyler Morgan.

8 To date, Tyler Morgan had not filed a  
9 response to the Commission Order that opened the show  
10 cause and general investigation proceeding.

18 Today's hearing is an opportunity for  
19 Tyler Morgan and Staff both to present evidence,  
20 including the proposed Settlement Agreement. Under our  
21 rules we typically do not take a settlement without  
22 supporting evidence to show that it is basically a fair  
23 and reasonable arrangement.

24 And we almost invariably find that they  
25 are, I might add, particularly when the parties negotiate

1 them because they each have their own interest at heart.

8 Let's go ahead and start by taking  
9 appearances of counsel. Staff?

10 ATTORNEY BOUVETTE:

11 Linda Bouvette, Staff Attorney. And I  
12 have with me Mr. Greg Birurakis and Kathy Payne from the  
13 Transportation Commission.

14 CHAIRMAN ALBERT:

15 Tyler Morgan?

16 ATTORNEY SMITH:

20 | CHAIRMAN ALBERT:

1       entertaining, but that we don't have to sit and listen to  
2       him go through it all again.

3                   We also have a --- as we do in any rate  
4       proceeding, we also put into testimony the support for  
5       our --- the Staff's --- the Commission's claim in the  
6       proceeding, and also anything that might reflect on the  
7       reasonableness of the settlement proposal being presented  
8       to the Commission.

9                   I think that that's helpful to us. It  
10       certainly makes it easy to support the stipulation. And  
11       I think at this time what we'll do is go ahead and allow  
12       Staff to present that testimony as, quite frankly, in an  
13       abbreviated fashion as possible.

14                   ATTORNEY BOUVETTE:

15                   Do you want me to just review the  
16       documents, ---

17                   CHAIRMAN ALBERT:

18                   Yes.

19                   ATTORNEY BOUVETTE:

20                   --- rather than having Mr. Birurakis  
21       take the stand?

22                   CHAIRMAN ALBERT:

23                   Yeah.

24                   ATTORNEY BOUVETTE:

25                   The first exhibit that we have at tab

1 one is the Direct Testimony of Greg Birurakis, who  
2 summarizes his background and also his CRTS Program. We  
3 ask that be identified as Staff Exhibit 1.

4 CHAIRMAN ALBERT:

5 All right. It will be so marked.

6 (Staff Exhibit 1 marked for  
7 identification.)

8 ATTORNEY BOUVETTE:

9 The second exhibit is the internal  
10 memorandum, dated October 3rd, 2008 (sic) from Greg  
11 Birurakis to Linda Bouvette, Staff Attorney. And in the  
12 internal memorandum Mr. Birurakis notes that no response  
13 was filed by Tyler Morgan to the Commission's July 20th,  
14 2018 Order, noting that Tyler Morgan did respond to the  
15 first set of data request from Staff.

16 He then noted that there were seven ---  
17 ten Notices of Violation that remained unpaid and that  
18 were noted in the Show Cause Order, and then one  
19 additional Notice of Violation. The total Notices of  
20 Violation administration sanctions is \$5,704.60.

21 He then indicated that, based on the  
22 information submitted in Tyler Morgan's response to data  
23 request, that they then pay tonnage fees calculated to be  
24 \$1,772.95 for the period March 2018 and June 30th of  
25 2018.

1 He supported his memorandum with an  
2 Exhibit A, documenting the unpaid Notices of Violation,  
3 and also Exhibit B, which is a calculation of the unpaid  
4 CRTS tonnage fees.

CHAIRMAN ALBERT:

6 Well, those referenced exhibits will be  
7 marked for identification and admitted into the record.

8 (Staff Exhibit 2 was marked for  
9 identification.)

10 ATTORNEY BOUVETTE:

11 As Exhibit 3 we have the list of  
12 Notices of Violation. The first one is dated September  
13 14 of 2016. It's for overweight, and the fine was  
14 \$1,009.

15 The second, 9/28/2016, for overweight,  
16 \$494; October 12th of 2016, \$378 for overweight;  
17 March 27th, 2017, the fine was \$246.60 for overweight;  
18 April 11th, 2017, the administrative sanction was \$1,478;  
19 April 25th of 2017, fine of \$360.20; August 4th of 2017,  
20 a fine of \$869.80 for overweight; November 22nd, 2017,  
21 \$300.80 for overweight; April 3rd of 2018, \$242.40 for an  
22 overweight. And then the last was June 22nd, 2018, for  
23 \$325.80 for overweight, totaling \$5,704.60.

CHAIRMAN ALBERT:

25 All right. That will be admitted as

1 well.

2 (Staff Exhibit 3 was marked for  
3 identification.)

4 ATTORNEY BOUVETTE:

5 Following the Notices of Violation, an  
6 expiration of 20 days from the date of service, the  
7 Respondent did not request a hearing. So the Staff made  
8 a final recommendation to the Commission for a Final  
9 Order. And those --- Staff final recommendations are  
10 found at Exhibit 4.

11 CHAIRMAN ALBERT:

12 All right.

13 (Staff Exhibit 4 marked for  
14 identification.)

15 ATTORNEY BOUVETTE:

16 And they correspond with the case  
17 numbers assigned to the Notices of Violation.

18 And finally, at Exhibit 5 we have the  
19 individual Final Orders imposing violations and  
20 administrative sanctions for each one of the Notices of  
21 Violation.

22 CHAIRMAN ALBERT:

23 All right.

24 (Staff Exhibit 5 marked for  
25 identification.)

1 | CHAIRMAN ALBERT:

2 The matters referenced in your  
3 discussion and marked for identification as Exhibits 1  
4 through 5 will be admitted into the record.

5 The Commission is aware that the  
6 parties have negotiated and executed a Joint Stipulation  
7 and Settlement Agreement. We're always pleased by that.  
8 And we thank you for that effort.

9 And do you want to describe that or how  
10 --- do you want to --- I'm perfectly prepared just to  
11 accept a description of it since we've got it in writing.  
12 And if you want to go through it briefly, that would  
13 work.

14 ATTORNEY BOUVETTE:

15 I can do it very briefly. We have a  
16 Joint Stipulation and Settlement Agreement. We'd like  
17 that identified as Joint Exhibit 1. And it requires  
18 Tyler Morgan to pay the administrative sanctions and the  
19 delinquent CRTS tonnage fees on today's date at the  
20 evidentiary hearing.

21 We expect to have a check tendered  
22 today, payment in full. And they agreed to stay current  
23 on all tonnage fees and CRTS administrative sanctions  
24 going forward. And the parties urge the Commission to  
25 approve the agreement as it is.

1 | CHAIRMAN ALBERT:

2 All right.

3 (Joint Exhibit 1 was marked for  
4 identification.)

5 | CHAIRMAN ALBERT:

6 Well, rather than having a lengthy  
7 discussion about the Order --- I mean, the stipulation,  
8 if the checks have been paid, what we'll likely do is  
9 simply say that the matter is dismissed under  
10 satisfaction for the debt and not have to make an  
11 assessment of the ruling and all the background. Is that  
12 acceptable?

13 ATTORNEY BOUVETTE:

14 As long as she's got her check with  
15 her, that's satisfactory to the Staff.

16 | CHAIRMAN ALBERT:

17 Kind of a tacky way to put it, but I  
18 understand.

19 ATTORNEY SMITH:

20 We can show you the money.

21 | CHAIRMAN ALBERT:

22 Ms. Smith, do you have any comments you  
23 want to make about the stipulation or anything that's  
24 been submitted into the record? It's there in case we  
25 get asked about it. That's all. As I say, this likely

1 will simply be dismissed for satisfaction.

2 ATTORNEY SMITH:

3 We have no objection or comments.

4 Thank you.

5 CHAIRMAN ALBERT:

6 Okay. Short and sweet. Anything else?

7 ATTORNEY BOUVETTE:

8 No, Your Honor.

9 CHAIRMAN ALBERT:

10 All right. We'll adjourn this hearing  
11 and consider the matter submitted. Thank you.

12 \* \* \* \* \*

13 HEARING CONCLUDED AT 1:15 P.M.

14 \* \* \* \* \*

15

16

17

18

19

20

21

22

23

24

25

1

## CERTIFICATE

2

3 I hereby certify, as the stenographic reporter, that  
4 the foregoing proceedings were taken stenographically by  
5 me, and thereafter reduced to typewriting by me or under  
6 my direction; and that this transcript is a true and  
7 accurate record to the best of my ability.

8

Dated the 31st day of October, 2018

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



Court Reporter

Cynthia Piro Simpson